UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/13
15 August 2002

ENGLISH
Original: ENGLISH/FRENCH*

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Agenda item 4

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Report of the sessional working group on the working methods and activities of transnational corporations on its fourth session

Chairperson-Rapporteur: Mr. El-Hadji Guissé

* The annex is being circulated as received, in the languages of submission only.

GE.02-15007 (E) 160802 200802

CONTENTS

	Paragraphs	Page
Summary		3
Introduction	1 - 11	4
I. IMPACT OF TRANSNATIONAL CORPORATIONS ON THE ENJOYMENT OF CIVIL, CULTURAL, ECONOMIC, POLITICAL AND SOCIAL RIGHTS	12	5
II. DRAFT PRINCIPLES RELATING TO THE HUMAN RIGHTS CONDUCT OF COMPANIES	13 - 40	6
III. RECOMMENDATIONS FOR FUTURE WORK OF THE WORKING GROUP	41 - 43	13
IV. ADOPTION OF THE REPORT OF THE WORKING GROUP	44	14
Annex: Draft norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights		15

Summary

The sessional working group on the working methods and activities of transnational corporations held its fourth session on 1 and 2 August 2002. Mr. El-Hadji Guissé, expert, was re-elected Chairperson/Rapporteur.

In his opening statement, the Chairperson noted that one of the main issues to be addressed at the session was the relationship between transnational corporations and the State. He recalled the fact that the current international economic system, which was based on the free-market philosophy, privatization and a reduction of the public sector, was preventing many poor countries from developing.

Mr. Weissbrodt, expert, then presented the "Human rights principles and responsibilities for transnational corporations and other business enterprises" (draft norms) (E/CN.4/Sub.2/2002/WG.2/WP.1) as well as the "Introduction" and "Commentary" to the draft norms (E/CN.4/Sub.2/2002/WG.2/WP.1/Add.1 and 2). He said that all the members of the working group had come to an agreement on the draft norms. He then considered several of the most significant measures contained in the draft norms, highlighting in particular definitions, implementation measures, the type of corporation targeted and the binding nature of the draft norms.

After various statements by members of the working group, other experts took the floor, either to support the immediate adoption of the draft norms, or to suggest that more work was needed on the question. The issue was then raised of the desirability and manner of defining transnational corporations, whether according to the number of their employees or the public nature of their activities. Several experts also discussed the binding character of the draft norms.

Many experts mentioned the need to set up follow-up mechanisms. Other proposals concerned the role of domestic courts, the desirability of an annual report on the activities of transnational corporations and the possible appointment of a special rapporteur of the Commission on Human Rights in charge of monitoring the implementation of the draft norms.

Most other participants welcomed the draft, a measure which they qualified as urgent and useful, especially in the light of recent financial scandals. These participants called for the immediate adoption of the draft norms, while some others, taking a more critical stand, pointed out that the draft norms were not binding and expressed the view that the working group had exceeded its mandate.

Suggestions were made for a series of studies to be discussed at the working group's future meetings and on ways of improving the system used to supervise the activities of transnational corporations.

Introduction

1. By its resolution 1998/8, the Sub-Commission on the Promotion and Protection of Human Rights established in 1999, for a period of three years, a sessional working group to examine the working methods and activities of transnational corporations. By its resolution 2001/3, the Sub-Commission decided to extend, for a three-year period, the mandate of the sessional working group of the Sub-Commission established to examine the working methods and activities of transnational corporations, so that it could fulfil its mandate. Accordingly, the Sub-Commission held the first session of the working group under its extended mandate.

2. The following experts acted as members of the working group: Mr. El-Hadji Guissé (Africa), Mr. Soo-Gil Park (Asia), Mr. David Weissbrodt (Western Europe and other States), Mr. Miguel Alfonso Martínez (Latin America and the Caribbean), and Mr. Vladimir Kartashkin (Central and Eastern Europe).

3. The working group held two public meetings during its session, on 1 and 2 August 2002.

4. Mr. El-Hadji Guissé was elected Chairperson-Rapporteur.

5. The following members or alternates of the Sub-Commission who were not members of the working group also attended the meetings: Ms. Françoise Hampson, Mr. Emmanuel Decaux, Ms. Iulia-Antoanella Motoc, Ms. Forizelle O'Connor, Mr. Godfrey Preware, Ms. Lalaina Rakotoarisoa, Mr. Soli Sorabjee, Ms. Halima Warzazi, Mr. Yozo Yokota, Ms. Leila Zerrougui.

6. The following specialized agency was represented at the session of the working group: International Labour Organization.

7. Representatives of the following non-governmental organizations also participated in the meetings of the working group: Europe-Third World Centre (general), American Association of Jurists, Amnesty International, Christian Aid, Human Rights Advocates Inc., Human Rights Watch, Indian Movement "Tupaj Amaru", Indigenous World Association, International Federation of Human Rights Leagues (FIDH), International League for the Rights and Liberation of Peoples, International Service for Human Rights, Lawyers Committee for Human Rights, Pax Romana, World Organization against Torture (special), Klaus Leisenger, NOVARTIS Foundation (other).

8. The working group had adopted the following agenda in 1999 for the duration of its mandate:

1. Election of officers.

2. Adoption of the agenda.

3. Activities of transnational corporations.

4. Present standards and standard-setting activities.

5. Conclusions and recommendations.

6. Recommendations for the future work of the working group on the effects of the activities of transnational corporations on human rights, including the right to development and the right to a healthy environment.

7. Adoption of the report of the working group to the Sub-Commission.

9. The working group had before it the following documents: "Human rights principles and responsibilities for transnational corporations and other business enterprises" ("the draft norms") (E/CN.4/Sub.2/2002/WG.2/WP.1); "Introduction" to the draft norms (E/CN.4/Sub.2/2002/WG.2/WP.1/Add.1); "Commentary" on the draft norms (E/CN.4/Sub.2/2002/WG.2/WP.1/Add.2; and two notes by the secretariat (E/CN.4/Sub.2/2002/11 and E/CN.4/Sub.2/2002/12) .

10. The draft norms have been annexed to the present report.

11. The practice of prior sessions of opening all of the agenda items for discussion simultaneously was adopted. Speakers therefore had the opportunity to make statements on one or more agenda items at the same time.

I. IMPACT OF TRANSNATIONAL CORPORATIONS ON THE ENJOYMENT OF CIVIL, CULTURAL, ECONOMIC, POLITICAL AND SOCIAL RIGHTS

12. The Chairperson opened the session by noting that one of the main issues to be addressed was the relationship between transnational corporations and the State. He recalled the fact that the International Covenants on Human Rights and the Declaration on the Right to Development established that States are the primary duty bearers of human rights and that, as a consequence, each State needed to regulate foreign investment within its jurisdiction. Nonetheless, post-colonial exploitation of developing countries by transnational corporations had become intolerable. The international economic system that was emphasizing the free market philosophy, privatization and a reduction of the public sector was preventing many poor countries from developing. In particular, transnational corporations had massive budgets, were driven essentially by profit, used the smallest number of workers possible, moved from jurisdiction to jurisdiction with relative ease, imported labour to the detriment of local labour, and they did not always take into account the social needs of the country in which they were operating. As a result of these factors and many other international economic issues such as insufficient technology transfer, lack of foreign investment and the brain drain, many developing countries required regulation within the framework of the United Nations in order to respond effectively to the situation.

II. DRAFT PRINCIPLES RELATING TO THE HUMAN RIGHTS CONDUCT OF COMPANIES

Comments by the members of the working group

13. Mr. Weissbrodt presented the "Human rights principles and responsibilities for transnational corporations and other business enterprises" as well as the "Introduction" and "Commentary" to the draft norms.

14. Mr. Weissbrodt started by referring to the three-day inter-sessional meeting of the working group held in Geneva in February 2002 at which the draft norms had been adopted. All the members of the working group had come to an agreement on the draft norms and had also agreed to change the name to "Draft norms and responsibilities of transnational corporations and other business enterprises with regard to human rights". Paragraph 12 of the draft norms had been amended to include the right to drinking water. Turning to the nature of the draft norms, Mr. Wessbrodt emphasized that the document was binding in the sense that it applied human rights law under ratified conventions to the activities of transnational corporations and other business enterprises. Moreover, the language of the document emphasized binding responsibilities through the use of the term "shall" rather than "should", and the draft norms included measures for implementation.

15. Mr. Weissbrodt then considered several of the most significant measures in the draft norms. Paragraph 1 emphasized that States had the primary responsibility to respect, ensure respect for, prevent abuses of and promote human rights. Transnational corporations and other business enterprises also held responsibilities in regard to human rights but nothing in the draft norms diminished the primary responsibility of States. Mr. Weissbrodt then cited the specific rights and obligations in the draft norms: the right to equal opportunity and non-discriminatory treatment; the right to security of person; the rights of workers; the right to respect for national sovereignty and local communities; obligations with regard to consumer protection; and obligations with regard to environmental protection. He highlighted various definitions, including those that stipulated that the scope of the draft norms included not only transnational corporations, but also other business enterprises. That had been included in order to ensure that transnational corporations could not change their identity - for example, by incorporating as a national enterprise - and thereby avoid the draft norms. Mr. Weissbrodt noted that the draft norms now contained implementation measures, including measures for monitoring and reparations. Mr. Weissbrodt pointed out that the commentary had been made a separate document (E/CN.4/Sub.2/2002/WG.2/WP.1/Add.2). Given the time limitations at the February meeting, not all members of the working group had had the chance to indicate their formal agreement of the commentary, although there had not been any actual disagreement. Mr. Weissbrodt finally expressed the hope that the working group could now adopt the draft norms and turn to other aspects of its mandate, such as improved monitoring and assessment of the activities of transnational corporations.

16. The Chairman-Rapporteur then opened the floor for comments by experts. Mr. Park underlined the importance of the commentary to the draft principles as a tool for clarifying the responsibilities by giving more detailed and specific information on each of them. In particular, the commentary included references to international human rights instruments and other legal

instruments, general comments of the treaty bodies, material presented to the working group by intergovernmental organizations and other reference documents. Mr. Park also noted that the working group had devised the commentary through a process of consultation with a diverse group of individuals and organizations. Once agreed upon, the commentary could either be integrated into the draft norms or the draft norms could be adopted alone and the commentary could be kept as a separate document. Mr. Park emphasized that adopting the draft norms was the priority.

17. Mr. Alfonso Martínez emphasized both the urgency and importance of adopting the draft norms, noting however that the urgency should not get in the way of ensuring that the document was as technically sound as possible. Mr. Alfonso Martínez stated that the draft norms were necessary given that the constantly expanding activities of transnational corporations, which sometimes had negative effects on the social collective, should not be regulated solely by the transnational corporations themselves. However, the working group was faced with the problem that while there was a need to seek binding rules and norms relating to the activities of transnational corporations, it was not possible within the United Nations framework to enforce such rules and norms. Given this situation, the text went as far as possible in setting out binding responsibilities.

18. Mr. Eide fully endorsed the comments of Mr. Alfonso Martínez. He stated that the mandate of the working group raised three questions. First, what were the responsibilities of transnational corporations; second, for whom should the responsibilities be drafteds; and third, who shall hold corporations responsible? Mr. Eide noted that, in relation to the first question, the draft norms set out effectively the responsibilities of transnational corporations. In relation to the second question, Mr. Eide underlined the importance of not limiting the draft norms to transnational corporations. He gave the example of suppliers to transnational corporations. In the case of cocoa production, the national suppliers of transnational chocolate corporations had been known to use child and slave labour in order to maintain profitable production levels. The suppliers therefore should also be covered by the draft norms, in spite of the fact that they were not transnational corporations. In relation to the third question, Mr. Eide stated that the draft norms correctly emphasized that States had the primary responsibility to promote and protect human rights. Nonetheless, there was ineffective regulation by States, often owing to the fact that Governments thought that they were too weak, or as a result of corruption and collusion between the States and the corporation, or owing to obligations that States had taken in international economic forums which constrained their capacity to promote human rights. Mr. Eide emphasized the need to examine these issues when discussing how to ensure compliance with the draft norms.

Amendments proposed by experts

19. Amendments to the draft norms were proposed by Mr. Alfonso Martínez and three Sub-Commission experts. Mr. Martínez noted a difference in the Spanish and English versions of the thirteenth preambular paragraph.

20. Ms. Hampson proposed three amendments

(a) The insertion of the following text at the end of paragraph 15:

"Each transnational corporation or other business enterprises shall apply and incorporate these principles in their contracts or other arrangements and dealings with contractors, sub-contractors, suppliers and licensees."

(b) The insertion in paragraph 19, after "refers to", of the following:

"an economic entity operating in more than one country or"

(c) The insertion of a new paragraph 21 as follows:

"These principles only apply to transnational corporations and other business enterprises employing more than 100 people."

21. Mr. Decaux indicated that there were several problems with the French translation of the draft norms and provided the secretariat with a list of amendments which have been integrated into the text annexed to the French version of the report.

22. Mr. Yokota proposed to insert a new paragraph between paragraphs 1 and 2 as follows:

"Transnational corporations and other business enterprises shall refrain from any activity which supports, solicits or encourages States or any other entities to violate or abuse human rights. Furthermore, they shall ensure that the goods and services they provide will not be used to violate or abuse human rights."

23. Mr. Yokota also proposed the addition of the following words to the end of the last sentence of paragraph 10:

"so long as they are in accordance with international human rights norms and standards and with the principle of good governance including transparency, accountability and prohibition of corruption."

Comments by experts of the Sub-Commission

24. Other experts also took the floor to discuss the draft norms. Rather than presenting the discussion chronologically, the comments of the experts have been grouped according to the issues raised. Experts spoke about the general importance of adopting draft norms. Several experts expressed their belief that the draft norms were excellent, their value stemming from the fact that they recognized global trends towards the increased influence of transnational corporations on the economies of most countries. One expert added that it was significant that the guidelines recognized that transnational corporations had the capacity both to foster

economic well-being as well as to impair the enjoyment of human rights. Several experts underlined the urgency of the need for draft norms and encouraged their adoption by the Sub-Commission this year. Some other experts, however, believed that the document needed more work.

25. Several experts raised the issue of the type of business enterprise that should be covered by the draft norms. One expert expressed concern that the application of the draft norms to business enterprises other than transnational corporations did not represent the spirit of the mandate of the working group and the inclusion of "other business enterprises" would mean that all business entities, even the local corner shop, would be covered. He called for a more precise definition of the scope of the draft norms to limit their application to transnational corporations and collaborating businesses. One expert suggested that it would be important to focus on the entities doing the most harm to the enjoyment of human rights, namely transnational corporations. In this regard, the expert noted that legislation in Europe existed that related solely to transnational corporations and that this therefore demonstrated that regulation limited to these entities was in fact possible.

26. Experts also referred to the amendment limiting the application of the draft norms to enterprises employing over 100 employees. Mr. Alfonso Martínez agreed that the draft norms might take into account the concern that not every business should be included. One expert questioned the basis for choosing 100 employees as the cut-off mark, stressing that the issue should not be the size of the business entity but rather the type of activity it was involved in. Thus, he suggested that the test should not focus on the number of employees, but on whether the business entity was performing activities of a public nature that affected people. Another expert argued that she had great difficulty limiting the draft norms to activities by private entities that had a public nature as that could limit the scope of the draft norms when many activities of private entities not normally undertaken by the public sector could have equally significant effects on the enjoyment of human rights. In that sense, the expert believed that use of a crude numerical limitation as proposed would be more effective.

27. Several experts discussed the binding character of the draft norms. One expert noted that the preamble only "urges that every effort be made so that [the draft norms] become generally known and respected". The expert suggested that such language was weak and thus detracted from the notion of the draft norms being binding. In relation to this comment, another expert noted that the preambular language indicated that it was the Sub-Commission that "urges", which was all that the Sub-Commission could do; consequently, the use of the word "urges" had no relevance to the binding character of the draft norms. Another expert expressed surprise at the assertion that the draft norms were binding. The expert referred to traditional and new sources of international law, noting that the draft norms did not fall within either of those categories. The expert also noted that the mandate of the working group did not include the setting of binding standards and that there was no follow-up mechanism in the draft norms. One expert highlighted the fact that many countries had not ratified all the principal human rights instruments and so a reference to customary international law could strengthen the draft norms.

28. Experts also referred to the implementation and monitoring of the draft norms. One expert appreciated the inclusion in paragraph 16 of monitoring mechanisms that included non-governmental organizations. The expert also expressed the hope that national courts would

play a role in monitoring the implementation of the draft norms. Another expert suggested that the working group could propose a follow-up mechanism of a group of experts which could be incorporated in the draft. Another expert suggested an annual report on the activities of transnational corporations as a follow-up mechanism. Another follow-up measure could be to request the United Nations to ensure that respect for the draft norms was included in the contracts it concluded with private-sector entities for the procurement of services.

29. Another expert suggested that the Commission on Human Rights could be requested to appoint a special rapporteur on transnational corporations who could use the draft norms as a measure of corporate conduct. Another expert proposed as an implementation measure that the draft norms could be relied upon in proceedings before domestic courts and suggested the inclusion of a reference to domestic courts in section H of the draft norms. Another expert pointed out that domestic courts could at times be weak and even subject to corruption or collusion with transnational corporations, and therefore emphasized the importance of international pressure as part of the follow-up mechanism. Yet another expert was worried that the draft norms did not include sanctions and encouraged the working group, in spite of the urgency of the need to adopt the draft norms, to take more time to consider how to strengthen their enforcement and to reflect the real needs of those who would benefit from them.

Comments by the ILO

30. The observer for the International Labour Office (ILO) welcomed the fact that many of the comments that the organization had made at the third session of the working group in 2001 had been taken into account. The ILO proposed one amendment to the draft norms and two concerning the commentary.

(a) In the seventh preambular paragraph, replace the words "ILO Committee on Multinational Enterprises" by "ILO Governing Body Sub-Committee on Multinational Enterprises";

(b) In the commentary, delete the words "for example" in commentary (a) of paragraph 5;

(c) In the commentary to paragraph 5, a new commentary (c) reading as follows:

"Employers shall have resort to prison labour only in the conditions spelt out in ILO Convention No. 29, which allows such labour only if the prisoners concerned have been convicted in a court of law, take part voluntarily in employment for private undertakings under the supervision and control of a public authority."

Comments made by non-governmental organizations

31. NGOs generally welcomed the draft norms. Several NGOs asserted the primacy of human rights law in international law and its application to all private actors. Similarly, some NGOs welcomed the recognition in the draft norms of the role of States as the primary responsibility-holder for human rights. One NGO noted the need for a statement of ethics for transnational corporations in light of recent corporate scandals and emphasized that human rights

law was the ultimate source of those ethics. Several NGOs welcomed the transparent consultative process used to develop the draft norms, although one representative of a corporate group stated that business involvement in the drafting process had been lacking. However, a representative of two business associations stated that, in establishing the working group, the Commission on Human Rights had moved outside its area of competence. An NGO responded by noting that, having worked for a transnational corporation, he understood how the quest for power could lead to violations of human rights. Another NGO supported the draft norms, noting that without them, transnational corporations could continue to act with impunity.

32. Two NGOs provided a list of criticisms of the draft norms that stated that: the draft norms departed from the mandate of the working group which was to examine transnational corporations, not other business enterprises; the draft norms ignored the obligatory nature of human rights norms with regard to transnational corporations; the draft norms held employees of transnational corporations responsible for violations of human rights which deviated from the responsibilities of transnational corporations under civil and criminal law; the draft norms gave priority to norms of a voluntary nature, thus giving States a secondary role in the application of legal human rights norms; the draft norms presented a human rights framework to transnational corporations that was non-binding. The NGOs called for a binding legal framework that would punish transnational corporations for violations of human rights.

33. An employee of a private sector foundation with 25 years of working experience with a transnational corporation took the floor in a personal capacity. First, the speaker expressed her gratitude for the consultation held with the private sector in the formulation of the draft norms. Second, the speaker stated that in her opinion, no transnational corporation would have a problem with respecting the human rights set out in the draft norms, as respect for those rights was essential for entrepreneurial success. Third, the speaker suggested that the draft norms nevertheless presented operational difficulties. For example, the right to access health care could not be the exclusive obligation of the pharmaceutical industry. Finally, the speaker highlighted the need to develop the verification process envisaged in part .. of the draft norms, noting the need to elaborate external benchmarks to ensure objectivity.

34. One NGO called for the draft norms to be applied to all private enterprises - local, national and international - on the grounds that any enterprise, whatever its size, could violate human rights. Another NGO requested that the draft norms expressly apply to "contractors, subcontractors, suppliers and licensees". One NGO encouraged the general application of the draft norms so as not to single out certain corporate actors. However, another NGO stated that the reference to "other business enterprises" was too vague and led the working group outside its mandate. Another NGO emphasized the need to make the draft norms applicable to all business entities as any limitation would merely create a loophole allowing corporations to avoid responsibility.

35. Most NGOs raised the issue of the binding character of the draft norms. One NGO stated that, in calling for legally binding principles, it was expressing the concerns of individuals, in particular the concerns of the rural poor and farming populations, who needed protection against corporate influence of government policy, including in the setting of national and international trade law and policy. Another NGO stressed that a legally binding instrument would take too long to draft and adopt, which would set back the hopes of the victims of corporate

irresponsibility - women who suffered discrimination in the workplace, child labourers, women and children in the sex industry, gays, lesbians and transgender people suffering discrimination and dismissal on the basis of who they were, indigenous peoples, people deprived of their health or education, and so on. The NGO also noted that the discussion on the binding character of the draft norms had overlooked the fact that there were corporations working for development and the promotion of human rights. In this respect, the representative referred to the "Statement by the Prince of Wales International Business Leaders Forum on the Draft Human Rights Principles and Responsibilities for Transnational Corporations and other Business Enterprises" which praised the draft norms as the most authoritative and comprehensive set of guidelines to date that made the Universal Declaration of Human Rights applicable to companies. Another NGO referred to violations of human rights by oil companies in the Sudan and noted that legally binding international principles were essential in order to ensure that business could be a positive force for development.

36. One NGO expressed disappointment that the draft norms were not binding, which left them open to political, economic and strategic manipulation, in particular by developed countries. Specifically, the representative emphasized that indigenous peoples were the victims of transnational corporations as they were stripped of their lands and genetic resources. A representative of two corporate groups stated that any document applying human rights standards to corporations should be voluntary only, stressing that a one-size-fits-all approach would limit innovation. Further, such principles should be developed by businesses themselves and the draft norms had failed to capitalize on past successes in that regard.

37. Some NGOs called for the establishment of monitoring mechanisms that included sanctions against transnational corporations that violated human rights. Some NGOs called for the inclusion of a monitoring mechanism that allowed for individual or collective complaints and one NGO suggested the establishment of a "permanent forum". One NGO encouraged the involvement of the United Nations treaty bodies and the special mechanisms of the Commission as possible way of improving the monitoring and implementation of the draft norms. The NGO encouraged the working group to create a monitoring mechanism that included a range of actors, including international and regional human rights mechanisms, NGOs and companies, that could receive and provide information and could provide financial remedies in the case of violations. The NGO also encouraged further studies under paragraph 4 (f) of the mandate of the working group and stressed the need for the working group to examine the liberalization of trade in services, in particular under the General Agreement on Trade in Services of the World Trade Organization.

38. Several NGOs advocated the immediate adoption of the draft norms. One NGO encouraged the adoption and broad application of the draft norms as that would be important in ensuring that companies did not move their activities from country to country in search of the jurisdiction with the weakest corporate regulation. Another NGO noted that the adoption of the draft norms would free up space for the working group to focus on implementation and enforcement. One NGO called for the adoption of the draft norms by the Sub-Commission and by the Commission on Human Rights at its next session. Another NGO referred to the situation of people in the field living and working in precarious situations who could really benefit from the immediate adoption of the draft norms.

39. Some NGOs made specific recommendations to the working group. One NGO called for the amendment of the first sentence of paragraph 15 concerning implementation of the draft norms so that the words "consistent with" would read "comply with". The NGO also called for the commentary to be explicitly accepted as an authoritative instrument of interpretation. Another NGO encouraged the working group to continue to examine, receive and gather information on the activities of transnational corporations, in accordance with its mandate. Another NGO called for the consideration of ways to disseminate the draft norms, as they were unknown outside the Sub-Commission, for example at the forthcoming World Summit on Sustainable Development (WSSD). Another NGO also referred to the need to connect the working group with the WSSD, noting that the draft norms could contribute to strengthening the social agenda. An NGO called for the express inclusion of a reference to the promotion of affirmative action schemes in the draft norms, a recommendation that was supported by one of the Sub-Commission experts. One NGO encouraged the working group expressly to include migrant workers within the application of the draft norms. The NGO also stressed the need to clarify that the draft norms applied to companies in States not party to the human rights instruments referred to in the draft. Another NGO requested specific reference to the protection of indigenous peoples in the draft norms.

Comments by government representatives

40. One government representative noted the rich discussion in the working group which clearly demonstrated the urgency of the need to do something about the violations of human rights by transnational corporations. The government representative suggested as a possible follow-up mechanism the creation by the Office of the High Commissioner for Human Rights of a corporate certification according to a predefined human rights standard.

III. RECOMMENDATIONS FOR FUTURE WORK OF THE WORKING GROUP

41. The working group then took up the subject of its future work.

42. The Chairperson suggested three areas for future consideration by the working group. First, he proposed that the working group consider the behaviour of pharmaceutical companies, particular in relation to the distribution of medicines to combat epidemic diseases such as HIV/AIDS. Another area proposed by the Chairperson was poverty and transnational corporations. The Chairperson highlighted the fact that transnational corporations, which held a large portion of global wealth, could be encouraged to become more engaged in poverty eradication programmes. Finally, the Chairperson suggested the inclusion of studies on the effects of transnational corporations on the enjoyment of human rights in developed countries, noting that the effects of corporate violations of human rights were not restricted to developing countries.

43. Mr. Eide thanked the Chairperson for raising these three new subjects. In relation to the first proposition, Mr. Eide noted the race for corporations to monopolize knowledge, in particular through the grant and use of intellectual property rights. Mr. Eide noted that, while the Sub-Commission had started to examine these issues in the context of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, there was still room for much deeper

analysis of those complex issues. Another expert similarly supported the first proposal of the Chairperson and referred to the important discussion on patents at the previous session of the Sub-Commission. The working group was another possible venue for the consideration of that question. Mr. Weissbrodt noted the Chairperson's important comments about new developments which would eventually be considered by the working group, including the first proposal which would add to the discussion on intellectual property protection and pharmaceuticals.

IV. ADOPTION OF THE REPORT OF THE WORKING GROUP

44. The present report was adopted by the working group at its meeting on 8 August 2002.

Annex

DRAFT NORMS ON RESPONSIBILITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH REGARD TO HUMAN RIGHTS

The five members of the working group (Chairperson El-Hadji Guissé, Miguel Alfonso-Martínez, Vladimir Khartashkin, Soo-Gil Park and David Weissbrodt) took into consideration the comments at its session convened during the fifty-fourth session of the Sub-Commission as well as E/CN.4/Sub.2/2002/WG.1/WP.1 and E/CN.4/Sub.2/2002/WG.1/WP.1/Add.1 in preparing these Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights for the purpose of consideration by the working group during its session at the fifty-fifth session of the Sub-Commission, in the expectation that the working group will submit a draft in light of comments already received and to be received by the Sub-Commission for plenary consideration at the fifty-fifth session.

RESPONSIBILITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH REGARD TO HUMAN RIGHTS

Preamble

Bearing in mind the principles and obligations under the Charter of the United Nations, in particular the preamble and Articles 1, 2, and 55, inter alia, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Recalling that the Universal Declaration of Human Rights proclaims a common standard of achievement for all peoples and nations, to the end that Governments, other organs of society, and individuals shall strive by teaching and education to promote respect for human rights and freedoms and by progressive measures to secure their universal and effective recognition and observance,

Recognizing that even though States have the primary responsibility to promote and protect human rights, transnational corporations and other business enterprises, as organs of society, are also responsible for promoting and securing the human rights set forth in the Universal Declaration of Human Rights,

Realizing that transnational corporations and other business enterprises, their officers and their workers are further obligated to respect generally recognized responsibilities and norms in United Nations treaties and other international instruments such as the Convention on the Prevention and Punishment of Genocide; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the International Covenant on Economic, Social and Cultural Rights; the International

Covenant on Civil and Political Rights; the Convention on the Rights of the Child; the four Geneva Conventions of 12 August 1949 and two Additional Protocols for the protection of victims of war; the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; the Rome Statute of the International Criminal Court; the United Nations Convention against Transnational Organized Crime; the International Convention on Civil Liability for Oil Pollution Damage; the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment; the Rio Declaration on Environment and Development; the International Code of Marketing of Breast-milk Substitutes and the Ethical Criteria for Medicinal Drug Promotion of the World Health Organization (WHO); the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education; conventions and recommendations of the International Labour Organization (ILO); the Convention and Protocol relating to the Status of Refugees; the African Charter on Human and Peoples' Rights; the American Convention on Human Rights; the European Convention on Human Rights; the Charter on Fundamental Rights of the European Union; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development (OECD); and other instruments,

Taking into account the standards set forth in the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, *aware of* the Guidelines for Multinational Enterprises of the OECD and its Committee on International Investment and Multinational Enterprises; the Global Compact initiative of the United Nations which challenges business leaders to "embrace and enact" nine basic principles with respect to human rights, including labour rights and the environment; and the ILO Declaration on Fundamental Principles and the Rights at Work,

Conscious of the efforts of the ILO Committee on International Investment and Multinational Enterprises; the interpretation of standards by the Subcommittee on Multinational Enterprises of the Committee on Legal Issues and International Labour Standards of the ILO Governing Body, the ILO Committee of Experts, the Conference Committee on the Application of Standards, and the ILO Declaration Expert-Advisors; as well as the ILO Committee on Freedom of Association which has named business enterprises implicated in States' failure to comply with ILO Conventions No. 87 concerning Freedom of Association and Protection of the Right to Organize and No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, and seeking to supplement and assist their efforts to encourage transnational corporations and other business enterprises to protect human rights,

Taking note of global trends which have increased the influence of transnational corporations and other business enterprises - and particularly transnational corporations - on the economies of most countries and in international economic relations, and the growing number of other business enterprises which operate across national boundaries in a variety of arrangements resulting in economic activities beyond the actual capacities of any one national system,

Noting that transnational corporations and other business enterprises have the capacity to foster economic well-being, development, technological improvement and wealth, as well as the capacity to cause deleterious human rights impacts on the lives of individuals through their employment practices, environmental policies, relationships with suppliers and consumers, interactions with Governments and other activities,

Noting also that new international human rights issues and concerns are continually emerging and that transnational corporations and other business enterprises often are related to these issues and concerns, such that further standard-setting and implementation are required at this time and in future,

Acknowledging the universality, indivisibility, interdependence and interrelatedness of human rights, including the right to development, that entitles every human person and all peoples to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized,

Reaffirming that transnational corporations and other business enterprises, their officers and their workers have human rights obligations and responsibilities and that these human rights responsibilities will contribute to the making and development of international law as to their responsibilities and obligations,

Solemnly proclaims these norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights and urges that every effort be made so that they become generally known and respected.

A. General obligations

1. States have the primary responsibility to respect, ensure respect for, prevent abuses of, and promote human rights recognized in international as well as national law, including ensuring that transnational corporations and other business enterprises respect human rights. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to respect, ensure respect for, prevent abuses of, and promote human rights recognized in international as well as national law.

B. Right to equal opportunity and non-discriminatory treatment

2. Transnational corporations and other business enterprises shall ensure equality of opportunity and treatment, for the purpose of eliminating discrimination based on race, colour, sex, religion, political opinion, nationality, social origin, social status, indigenous status, disability, age (except for children who may be given greater protection), or other status of the individual unrelated to the individual's ability to perform his/her job.

C. Right to security of persons

3. Transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, other violations of humanitarian law, and other international crimes against the human person as defined by international law.

4. Security arrangements for transnational corporations and other business enterprises shall observe international human rights norms as well as the laws and professional standards of the country or countries in which they operate.

D. Rights of workers

5. Transnational corporations and other business enterprises shall not use forced or compulsory labour as forbidden by the relevant international instruments and national legislation as well as international human rights law.

6. Transnational corporations and other business enterprises shall respect the rights of children to be protected from economic exploitation as forbidden by the relevant international instruments and national legislation as well as international human rights law.

7. Transnational corporations and other business enterprises shall provide a safe and healthy working environment as provided by the relevant international instruments and national legislation as well as international human rights law.

8. Transnational corporations and other business enterprises shall compensate workers with remuneration that ensures an adequate standard of living for them and their families. Such remuneration shall take due account of their needs for adequate living conditions with a view towards progressive improvement.

9. Transnational corporations and other business enterprises shall ensure the freedom of association and effective recognition of the right to collective bargaining by protecting the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without distinction, previous authorization, or interference, for the protection of their employment interests and for other collective bargaining purposes as provided in the relevant conventions of the ILO.

E. Respect for national sovereignty and human rights

10. Transnational corporations and other business enterprises shall recognize and respect applicable norms of international law; national laws; regulations; administrative practices; the rule of law; development objectives; social, economic, and cultural policies including transparency, accountability and prohibition of corruption; and authority of the countries in which the enterprises operate.

11. Transnational corporations and other business enterprises shall not offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other improper advantage. Nor shall they be solicited or expected to give a bribe or other improper advantage to any Government, public official, candidate for elective post, or any other individual or organization. Transnational corporations and other business enterprises shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights. They shall further seek to ensure that the goods and services they provide will not be used to abuse human rights.

12. Transnational corporations and other business enterprises shall respect civil, cultural, economic, political and social rights and contribute to their realization, in particular the rights to development; adequate food and drinking water; the highest attainable standard of physical and mental health; adequate housing; education; freedom of thought, conscience and religion; and freedom of opinion and expression; and refrain from actions which obstruct the realization of those rights.

F. Obligations with regard to consumer protection

13. Transnational corporations and other business enterprises shall act in accordance with fair business, marketing and advertising practices and shall take all necessary steps to ensure the safety and quality of the goods and services they provide. They shall not produce, distribute, market, or advertise potentially harmful or harmful products for use by consumers.

G. Obligations with regard to environmental protection

14. Transnational corporations and other business enterprises shall carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate as well as in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights, public health and safety; and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.

H. General provisions of implementation

15. As an initial step towards implementing these Human Rights Responsibilities, each transnational corporation or other business enterprise shall adopt, disseminate and implement internal rules of operation in compliance with these Responsibilities. Further, they shall take other measures fully to implement these Human Rights Responsibilities and to provide at least for the prompt implementation of the protections set forth in these Responsibilities. Each transnational corporation or other business enterprise shall apply and incorporate these principles in their contracts or other arrangements and dealings with contractors, sub-contractors, suppliers and licensees in order to ensure their implementation and respect.

16. Transnational corporations and other business enterprises shall be subject to periodic monitoring by national, international, governmental and/or non-governmental mechanisms regarding their application of the Human Rights Responsibilities. This monitoring shall be transparent, independent, and take into account input from stakeholders, including complaints of violations of these Responsibilities. Further, transnational corporations and other business enterprises shall conduct periodic evaluations concerning the impact of their own activities on human rights under these Responsibilities.

17. Transnational corporations and other business enterprises shall provide prompt, effective and adequate reparation to those persons, entities and communities that have been adversely affected by failures to comply with these Responsibilities through, inter alia, reparations, restitution, compensation and rehabilitation for any damage done or property taken. In connection with determining damages and in all other respects, these Responsibilities shall be enforced by national courts.

18. Nothing in these Human Rights Responsibilities shall be construed as diminishing, restricting, or adversely affecting the human rights obligations of States under national and international law. Nor shall they be construed as diminishing, or adversely affecting more protective human rights norms.

I. Definitions

19. The term "transnational corporation" refers to an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries - whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.

20. The phrase "other business enterprise" includes any business entity, regardless of the international or domestic nature of its activities, including a transnational corporation; the corporate, partnership, or other legal form used to establish the business entity; and the nature of the ownership of the entity. These Responsibilities shall be presumed to apply, as a matter of practice, if the business enterprise has any relation with a transnational corporation, the impact of its activities is not entirely local, or the activities involve violations of the right to security as indicated in paragraphs 3 and 4.

21. The term "stakeholder" includes stockholders, other owners, workers and their representatives, as well as any other individual or group that is affected by the activities of the business. The term "stakeholder" should be interpreted functionally in light of the objectives of these Human Rights Responsibilities and include indirect stakeholders when their interests are or will be substantially affected by the activities of the transnational corporation or business enterprise. In addition to parties directly affected by the activities of business enterprises, stakeholders can include parties which are indirectly affected by the activities of businesses such

as consumer groups, customers, Governments, neighbouring communities, indigenous peoples and communities, non-governmental organizations, public and private lending institutions, suppliers, trade associations and others.

22. The terms "contractor", "subcontractor", "supplier" and "licensee" include any natural or legal person who enters into any agreement with the transnational corporation or business enterprise to accomplish the enterprise's activities.

23. The phrases "internationally recognized human rights" and "international human rights" include civil, cultural, economic, political and social rights, as set forth in the International Bill of Human Rights and other human rights treaties, as well as the right to development and rights recognized by international humanitarian law, international refugee law, international labour law and other relevant instruments adopted within the United Nations system.